

EXHIBIT #1

(Redacted Exhibit)

Singer Declaration

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

- - - - -		- +
CAPITAL ONE FINANCIAL CORPORATION,		
Plaintiff,		
vs.		
JOHN A. KANAS and JOHN BOHLSSEN,		
Defendants.		
- - - - -		- +

*** HIGHLY CONFIDENTIAL ***

Rule 30(b)(6) Videotaped Deposition of

CAPITAL ONE FINANCIAL CORPORATION

by and through its designated representative

JOHN FINNERAN

Washington, D.C.
Wednesday, February 8, 2012
9:38 a.m.

Job No. 77782

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Reported by: Laurie Bangart, RPR, CRR

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0:15:01	1	refer to the page within a given exhibit.	10:17:25	1	commercial bank. It doesn't mean that he might
0:15:09	2	A Yes, I'm with you.	10:17:31	2	not have evolved into broader responsibilities
0:15:10	3	Q Okay. Does page 98 represent the	10:17:34	3	over the course of the contemplated three-year
0:15:15	4	geographical areas covered for each of four	10:17:35	4	period or, you know, if there was extension of
0:15:19	5	competitive businesses as to which John Bohlsen's	10:17:36	5	employment beyond that period.
0:15:25	6	noncompete agreement ran?	10:17:38	6	Q Mr. Bohlsen was not on the board of
0:15:28	7	A Yes, it is.	10:17:39	7	directors of Capital One; correct?
0:15:28	8	Q And so when you acquired North Fork in	10:17:41	8	A He was not.
0:15:32	9	2006, you had John Bohlsen sign a noncompete	10:17:42	9	Q His noncompete, though, as you've
0:15:35	10	agreement that applied to throughout the United	10:17:44	10	indicated, is just as broad as Mr. Kanas'; is that
0:15:38	11	States, the United Kingdom and Canada with respect	10:17:48	11	right?
0:15:41	12	to the credit card business; is that correct?	10:17:48	12	A The scope --
0:15:44	13	A He signed, he signed an agreement that	10:17:49	13	MR. SNYDER: Objection to form.
0:15:45	14	was identical in most respects to the agreement	10:17:51	14	You may answer.
0:15:51	15	John Kanas signed, that's correct.	10:17:53	15	THE WITNESS: The scope of the
0:15:53	16	Q Do you consider the positions that Kanas	10:17:53	16	noncompetes are, are identical.
0:15:55	17	and Bohlsen were going to serve at North Fork to	10:18:01	17	BY MR. SINGER:
0:15:58	18	be identical -- excuse me -- at Capital One would	10:18:01	18	Q Are there any discussions that you
0:16:01	19	have been identical?	10:18:03	19	recall with respect to Mr. Bohlsen or Mr. Kanas or
0:16:03	20	A Well, they obviously were not identical.	10:18:08	20	any representative of either of those gentlemen,
0:16:06	21	Mr. Kanas, as I said, was going to be the	10:18:14	21	including their counsel, with respect to the scope
0:16:08	22	president of the banking business. Mr. Bohlsen	10:18:16	22	of the noncompete provisions in the 2006
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0:16:11	1	was going to be the head of the commercial lending	10:18:18	1	restricted stock agreements?
0:16:15	2	aspect of the, of the banking business, but again,	10:18:21	2	MR. SNYDER: Objection. Compound and
0:16:19	3	you know, it is a very senior position within	10:18:23	3	somewhat confusing.
0:16:23	4	Capital One, and it -- you know, it both involves	10:18:24	4	BY MR. SINGER:
0:16:27	5	a lot of interaction with, with other executives,	10:18:25	5	Q If it's confusing to you, I'll break it
0:16:31	6	and again, because these agreements were done with	10:18:27	6	down.
0:16:35	7	a forward-looking aspect to them.	10:18:28	7	Is it confusing?
0:16:37	8	It contemplated that they may very well	10:18:29	8	A Sure. Why don't you break it down.
0:16:40	9	either have responsibility, over time, for some of	10:18:30	9	Q Okay. Let's start with Mr. Kanas.
0:16:44	10	these other businesses or in the conduct of their,	10:18:32	10	Were there any communications that you
0:16:46	11	of their business learn a sufficient amount of	10:18:33	11	had with Mr. Kanas personally over the scope of
0:16:51	12	proprietary and confidential information that it	10:18:35	12	the 2006 noncompete agreement?
0:16:53	13	would be appropriate to have a post-employment	10:18:37	13	A At what point in time?
0:16:56	14	restriction with respect to those businesses.	10:18:38	14	Q This would be during 2006. So it would
0:16:58	15	Q What role was Mr. Bohlsen going to have	10:18:41	15	either be before, during or after the execution
0:17:01	16	with respect to the auto lending business of	10:18:45	16	and closing of the acquisition of North Fork.
0:17:03	17	Capital One?	10:18:49	17	A I'm, I'm sorry, because, you know,
0:17:07	18	A You know, again, because he ended up	10:18:51	18	there's, there certainly came a time when I had
0:17:09	19	only spending eight or nine months as an	10:18:55	19	conversations directly with Mr. Kanas about the
0:17:12	20	executive, he, you know, never served beyond the	10:18:57	20	scope of the noncompete within the restricted
0:17:16	21	capacity that was originally assigned to, which	10:19:01	21	stock agreement.
0:17:21	22	was head of the commercial lending arm within the	10:19:01	22	Q Was that --

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10:36:49	1	infrastructure build to do.	10:38:43	1	there are lots of provisions -- again, you know,
10:36:51	2	When you put all of those things	10:38:44	2	you keep wanting to focus on the noncompete
10:36:53	3	together, you know, ensuring that John and John	10:38:47	3	aspects of this agreement, but again, this is a
10:36:55	4	could not come back, if for whatever reason they	10:38:50	4	restricted stock agreement.
10:36:58	5	may leave the company, within two years and build	10:38:52	5	It embodied the basic terms under which
10:37:00	6	a North Fork 2 was high on my list, you know, and	10:38:56	6	they would be senior executives at the company and
10:37:06	7	it's my responsibility to make sure that we are	10:38:58	7	how they would be compensated, and again, as is
10:37:08	8	protecting the asset that we're buying from a --	10:39:01	8	very typical in these kinds of, of arrangements,
10:37:11	9	protecting the confidential and proprietary	10:39:07	9	when you're buying, you know, a company and the
10:37:14	10	information, and, you know, it was just again	10:39:09	10	senior executive of the company is going to stay
10:37:19	11	obvious to anybody at Capital One that we should	10:39:12	11	on for, you know, for a period of time, in almost
10:37:23	12	have a, a period of time, you know, and five years	10:39:17	12	any circumstance other than the fellow up and
10:37:29	13	felt appropriate for all of those reasons.	10:39:20	13	quitting one day and walking out of the place,
10:37:31	14	Q Who picked five years in the first	10:39:23	14	completely voluntarily, or you having cause, you
10:37:33	15	place?	10:39:28	15	know, which is usually very narrowly defined, to
10:37:33	16	A You know, I don't recall, but it was	10:39:32	16	throw the bum out, you know, under almost any
10:37:35	17	probably me.	10:39:36	17	other circumstance under which they leave, they
10:37:35	18	Q Did you talk to anyone else at Capital	10:39:38	18	would get the full payout for whatever the period
10:37:37	19	One about five years?	10:39:41	19	of time was. That's exactly the way this thing
10:37:38	20	A I talked to Mr. Abrams and I talked to	10:39:44	20	worked.
10:37:40	21	Mr. Fairbank.	10:39:44	21	So my job, when I'm thinking about how
10:37:41	22	Q Did they suggest any other figure other	10:39:48	22	to protect the asset that we're buying, is, you
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10:37:43	1	than five years?	10:39:51	1	know, to hope and wish that everything happens
10:37:44	2	A Not that I recall.	10:39:56	2	just exactly the way you expect them to and that
[REDACTED]	[REDACTED]	[REDACTED]	10:39:59	3	they will stay on for their full three years and
[REDACTED]	[REDACTED]	[REDACTED]	10:40:02	4	continue to be a member of the team, but my job is
[REDACTED]	[REDACTED]	[REDACTED]	10:40:05	5	also to assume that the day after they closed, for
[REDACTED]	[REDACTED]	[REDACTED]	10:40:09	6	some reason it terminates and we have, from that
[REDACTED]	[REDACTED]	[REDACTED]	10:40:14	7	day on, you get to start counting your noncompete,
[REDACTED]	[REDACTED]	[REDACTED]	10:40:17	8	because they're now into post-employment.
[REDACTED]	[REDACTED]	[REDACTED]	10:40:20	9	So that's my job as a lawyer is to think
[REDACTED]	[REDACTED]	[REDACTED]	10:40:23	10	of the worst case and make sure that we're
10:38:04	11	Q Now, you had mentioned that one of the	10:40:25	11	protected with respect to those worst cases.
10:38:07	12	reasons you thought five years was appropriate	10:40:28	12	Q And the worst case would have been if he
10:38:10	13	related to the integration time that would be	10:40:32	13	left the day after you closed the transaction?
10:38:12	14	needed for North Fork. Do I -- is that one of	10:40:34	14	A Yes. Under any circumstances, and
10:38:15	15	your reasons?	10:40:35	15	there's a million circumstances under which people
10:38:16	16	A That's one of many.	10:40:38	16	could leave, including health reasons or they get
10:38:17	17	Q Can you explain how the time needed for	10:40:39	17	run over by a bus or anything like that.
10:38:19	18	the integration in North Fork related to having a	10:40:41	18	Q Now, you had indicated incentives for
10:38:22	19	five-year noncompete for a time period after Kanas	10:40:46	19	them to stay. You had a three-year vesting period
10:38:26	20	and Bohlsen would leave Capital One?	10:40:49	20	with respect to the restricted stock; correct?
10:38:34	21	A You never know, going into a transaction	10:40:51	21	MR. SNYDER: Objection to form.
10:38:37	22	like this, how long an executive will stay, and	10:40:52	22	You can answer.

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10:40:53	1 THE WITNESS: Yes.	10:57:37	1 have any direct conversations with either of them
10:40:53	2 BY MR. SINGER:	10:57:39	2 prior to their execution of the agreement, and I
10:40:53	3 Q And that meant they had to stay there	10:57:43	3 don't recall whether I had any in '06. I
10:40:55	4 for three years in order for the stock grants	10:57:46	4 certainly had some in '07 with Mr. Kanas.
10:40:58	5 under the restricted stock agreement to be fully	10:57:49	5 Q Okay. When did the transaction close?
10:41:01	6 vested; is that correct?	10:57:54	6 A In December of 2006.
10:41:01	7 A If they, if they remained employed for	10:57:57	7 Q As we move then into 2007, was Capital
10:41:05	8 the entire period, it would have vested at the end	10:58:00	8 One's management happy with the job that Kanas and
10:41:07	9 of the three-year period, that's correct.	10:58:03	9 Bohlsen were doing in discharging their
10:41:10	10 Q And the restricted stock was an	10:58:06	10 responsibilities?
10:41:12	11 incentive then for these individuals not just not	10:58:07	11 MR. SNYDER: Objection. I would say
10:41:15	12 to compete against Capital One but to work for	10:58:12	12 confusing.
10:41:17	13 Capital One for a three-year period; correct?	10:58:14	13 BY MR. SINGER:
10:41:19	14 MR. SNYDER: Objection to form.	10:58:14	14 Q Okay. If you understand the question,
10:41:20	15 You can answer.	10:58:15	15 please answer it.
10:41:23	16 THE WITNESS: The compensation that was	10:58:17	16 A Well, I'm not sure what you mean by
10:41:24	17 provided in the agreement was for the entire	10:58:19	17 "happy," but, well, let me again back up, because
10:41:26	18 agreement, you know, which contemplated that	10:58:21	18 I think some context is, is helpful here.
10:41:30	19 they would both provide some services as well	10:58:30	19 During the entire period of time between
10:41:32	20 as that they would not compete, you know,	10:58:32	20 the announcement of the acquisition and the
10:41:35	21 after the fact, that's correct.	10:58:33	21 closing of the acquisition, which in this case was
	22	10:58:37	22 an eight-month period of time of, you know, going
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10:41:37	1 BY MR. SINGER:	10:58:41	1 through the application process and getting
10:41:37	2 Q Are you able to break down how much of	10:58:43	2 regulatory approval and all of that, there's a lot
10:41:39	3 the stock related to one item versus another?	10:58:46	3 of activity that the management teams can legally
10:41:42	4 A No.	10:58:51	4 and appropriately engage in in terms of planning
10:41:56	5 MR. SINGER: We've been going for a bit.	10:58:55	5 for the integration and, you know, thinking
10:41:58	6 Why don't we take a few minutes.	10:58:58	6 through all of those outputs, intakes.
10:42:01	7 MR. SNYDER: Sure.	10:59:02	7 The actual job of managing the business
10:42:02	8 THE VIDEOGRAPHER: The time is	10:59:08	8 and directing what happens if the acquired entity
10:42:04	9 10:41 a.m. Going off the record.	10:59:13	9 cannot occur until the closing date, because
10:42:07	10 (Whereupon, a short recess was taken.)	10:59:15	10 you're not allowed to manage the entity until, you
10:57:12	11 THE VIDEOGRAPHER: The time is 10:57	10:59:19	11 know, you get the full regulatory approval and you
10:57:12	12 a.m., February 8, 2012. On the record with	10:59:22	12 close.
10:57:17	13 video 2.	10:59:23	13 So, you know, with that context, you
10:57:18	14 BY MR. SINGER:	10:59:26	14 know, Mr. Kanas and Mr. Bohlsen didn't really
10:57:20	15 Q Mr. Finneran, are there any other	10:59:28	15 begin to work as part of the Capital One executive
10:57:21	16 conversations you recall during 2006 with	10:59:31	16 team until, you know, early December of 2006.
10:57:24	17 Mr. Kanas or with Mr. Bohlsen regarding their	10:59:41	17 Q Recognizing that, what was the reaction,
10:57:29	18 noncompetes that you were a party to?	10:59:44	18 after they had been working there for let's say
10:57:32	19 A I'm sorry. Direct conversations with	10:59:47	19 the first quarter of 2007, of Capital One senior
10:57:33	20 the two of those?	10:59:51	20 management to the job that they were doing?
10:57:35	21 Q Yes.	10:59:55	21 MR. SNYDER: Same objection. Confusing.
10:57:35	22 A As, as I testified earlier, I didn't	10:59:57	22 You may answer.

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12:15:22	1	general counsel to protect the proprietary and	12:18:11	1	think he was open with me, and I was, you know,
12:15:25	2	confidential information of the -- of Capital One.	12:18:15	2	open with him.
12:15:31	3	Because of the short-term nature of	12:18:17	3	He told me what his interests were. I
12:15:36	4	their actual employment and because of the way	12:18:19	4	don't think that they had fully formed, but he did
12:15:39	5	they actually conducted themselves during the	12:18:24	5	mention that he may very well want to get into an
12:15:42	6	period of time that they were employees, they were	12:18:28	6	advisory role with hedge funds and that he may
12:15:48	7	not, in my judgment, a competitive risk with	12:18:35	7	very much want to get into an advisory role with
12:15:51	8	respect to the card business or the auto business.	12:18:38	8	investment banks where he could, you know,
12:15:55	9	And so there was not a particular need,	12:18:42	9	potentially, you know, use the knowledge that he's
12:15:58	10	from a Capital One perspective, now that I had the	12:18:46	10	acquired, you know, as a banker for 30 years, in a
12:16:03	11	benefit of knowing exactly what they knew and what	12:18:51	11	way that wouldn't be competitive with Capital One
12:16:07	12	they had been exposed to, to, you know, continue	12:18:55	12	in, you know, the tri-state, tri-state areas.
12:16:10	13	to have a restriction on their ability to engage	12:18:58	13	And, you know -- and I -- over time, you
12:16:17	14	in credit card lending or auto lending to the	12:19:03	14	know, I think he and I had a meeting of the minds
12:16:21	15	extent that those are outside of the construct of	12:19:07	15	of the scope of the noncompete, you know, and what
12:16:24	16	what the banking business, the commercial and	12:19:14	16	he would be free to do and what he would not be
12:16:28	17	retail banking business is, you know, within the	12:19:18	17	free to do for the five-year period following his,
12:16:31	18	tri-state area that we ultimately, you know, were	12:19:24	18	following his termination of employment, and, you
12:16:36	19	trying to make sure that we, that we preserved.	12:19:28	19	know, I think that you'll see some of those things
12:16:40	20	So in conversations with John, I let him	12:19:31	20	reflected in the way the agreement was drafted and
12:16:42	21	know that. I also let him know that we clearly	12:19:34	21	the way some of the exceptions were, were drafted.
12:16:47	22	did need to have a noncompete with respect to	12:19:40	22	Q Did the discussions you had with
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12:16:51	1	commercial and consumer banking. You know, we had	12:19:42	1	Mr. Kanas on this topic precede the drafting of
12:16:56	2	conversations, quite frankly, about what the	12:19:46	2	the documents, or did it go hand and hand?
12:16:58	3	geographic scope should be.	12:19:50	3	A Yes. It preceded the drafting of the
12:17:01	4	Again, I made the judgment, you know,	12:19:52	4	documents. He went off and talked with his
12:17:05	5	and I think it was after I was chatting with John	12:19:54	5	attorneys at Wachtell, and they produced the first
12:17:08	6	and I understood what his interests and desires	12:19:56	6	draft that reflected, you know, a lot of what
12:17:11	7	might be, that again, given what he and John	12:20:01	7	ended up being in the final draft, including the,
12:17:16	8	Bohlsen actually did and how much they really	12:20:06	8	the exceptions that, you know, I know are, you
12:17:20	9	truly learned and understood about the banking	12:20:10	9	know, at the heart of some of the disputes that,
12:17:25	10	business that we were engaged in in Louisiana and	12:20:14	10	you know, are at issue in this case.
12:17:27	11	Texas, that I didn't feel the need, in order to			
12:17:33	12	include Louisiana and Texas in the scope of the			
12:17:38	13	subsequent noncompete, notwithstanding the fact			
12:17:41	14	that we were engaged in that business in those			
12:17:45	15	locations, and notwithstanding the fact that John			
12:17:48	16	and John were in charge of those businesses at			
12:17:51	17	least for, you know, what ended up being a seven-			
12:17:56	18	or eight-month, eight-month period.			
12:17:59	19	So in these conversations John made			
12:18:01	20	it -- you know, I mean he shared with me -- again,			
12:18:04	21	I had a very open and good relationship with John			
12:18:07	22	Kanas. I, I enjoyed my interactions with him. I			

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12:25:29	1	constructs that banking business.	12:27:23	1	Q Prior to that resignation, what position
12:25:34	2	"Yes" is the answer to your question.	12:27:25	2	did she hold?
12:25:36	3	We were concerned that no matter where, what	12:27:26	3	A She was, until sometime last year, the
12:25:37	4	the source of the information, when they	12:27:28	4	president of our banking business.
12:25:39	5	acquired it, it belonged to Capital One as of	12:27:30	5	Q Was she a successor to John Kanas?
12:25:42	6	December of 2006. It was our information.	12:27:33	6	A She was.
12:25:44	7	We paid for it.	12:27:33	7	Q Did she have access to confidential
12:25:46	8	They had a close identity with the	12:27:35	8	information at Capital One?
12:25:49	9	customers, in the customers' mind, with	12:27:37	9	A Yes, she did.
12:25:53	10	respect to North Fork. It's understandable.	12:27:39	10	Q Throughout the time that she was
12:25:55	11	They did a great job in building that	12:27:40	11	president?
12:25:57	12	business. I wouldn't hold that from them at	12:27:41	12	A I'm sure she did.
12:25:59	13	all. It was many of the things that	12:27:44	13	Q Did she also, in that role, have the
12:26:01	14	attracted, you know, the business to us, but	12:27:47	14	opportunity to form relationships with customers
12:26:04	15	when we paid \$13.2 billion, we expected them	12:27:49	15	who she would meet?
12:26:08	16	not to compete with us and build a North	12:27:52	16	A She may have. I wouldn't know.
12:26:11	17	Fork 2 for five years after they left our	12:28:01	17	Q Did Capital One ask her to sign a
12:26:15	18	employ, no matter when it was that they left	12:28:04	18	noncompete agreement?
12:26:19	19	the employ of Capital One. That was our	12:28:06	19	A I don't -- you know, I don't know if we
12:26:21	20	expectation, and it was important.	12:28:08	20	did or not.
12:26:22	21	BY MR. SINGER:	12:28:09	21	Q And you already testified you don't know
12:26:22	22	Q But my question, Mr. Finneran -- and if	12:28:11	22	if she actually did so; correct?
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12:26:24	1	it's not clear to you, I'll try. We're focused on	12:28:14	1	A I don't.
12:26:27	2	the position that someone has at Capital One.	12:28:15	2	Q Well, going back to, to John Kanas, is
12:26:30	3	We're not talking about information from North	12:28:20	3	there any -- you mentioned you had these, these
12:26:32	4	Fork. We're not talking about relationships.	12:28:23	4	conversations over a period of, of time.
12:26:35	5	Is it important to Capital One that	12:28:27	5	Who initiated the discussion with
12:26:38	6	someone would occupies the position of head of	12:28:32	6	respect to changes in the noncompete; was it you,
12:26:40	7	consumer and commercial banking at Capital One be	12:28:35	7	or was it Mr. Kanas?
12:26:44	8	restricted by a noncompete so they do not use	12:28:41	8	A You know, I don't remember who initiated
12:26:47	9	confidential information in subsequent work?	12:28:43	9	it. I mean it evolved out of the conversations
12:26:50	10	A So just to be clear, are we talking	12:28:46	10	when we were talking about the, you know, how to,
12:26:52	11	about a hypothetical individual here, or are we	12:28:50	11	you know -- and again, you know, my initial
12:26:54	12	talking about Mr. Kanas and Mr. Bohlsen?	12:28:55	12	conversations with John were about the principles
12:26:56	13	Q We're not talking Kanas and Bohlsen.	12:28:59	13	and the goals that hopefully we would mutually try
12:26:59	14	A Okay. It depends on the facts and	12:29:03	14	to achieve.
12:27:00	15	circumstances.	12:29:05	15	Out of that, you know, I can't remember
12:27:01	16	Q Well, let's talk about Ms. Carter.	12:29:07	16	whether I was the first one to say, you know, I
12:27:03	17	Do you have a noncompete with her?	12:29:10	17	would be flexible about, you know, making some
12:27:07	18	A You know, I don't even know.	12:29:12	18	appropriate changes to the noncompete or whether
12:27:09	19	Q Okay. Ms. Carter is the president of --	12:29:14	19	he asked me for those, because he had some notion
12:27:12	20	what position does Ms. Carter hold?	12:29:18	20	of what he might like to do, either with a hedge
12:27:16	21	A She's, she's resigned. She no longer	12:29:21	21	fund or an investment bank.
12:27:22	22	holds a position.	12:29:23	22	Those are the two examples that I refer

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12:29:26	1	to, because those specifically he mentioned to me,	12:31:50	1	A If the question is did I think it was
12:29:29	2	and I have a very firm recollection of him talking	12:31:52	2	legally necessary to change the noncompete? The
12:29:32	3	about those as possibilities of what he would like	12:31:57	3	answer is no, I didn't think it was legally
12:29:35	4	to do, and we talked about that scope, just as	12:31:59	4	necessary. So let me explain, because you may not
12:29:38	5	well as I talked, as I said earlier, about, you	12:32:01	5	have noticed this, but I'm sure you have if you
12:29:42	6	know, John, I'm not sure that I really have a true	12:32:04	6	read the agreement.
12:29:45	7	need to noncompete you and John Bohlsen from the	12:32:06	7	The agreements are not automatically
12:29:49	8	auto business or from the credit card business.	12:32:09	8	barring of an executive. There is what we refer
12:29:53	9	Q If Mr. Kanas was deciding to, to use	12:32:11	9	to as a "look-back" period, which says they're
12:29:56	10	your term, "throw in the towel," why were you	12:32:15	10	only enforceable with respect to a particular line
12:29:58	11	willing to make any changes whatever in connection	12:32:18	11	of business if the executive, in the last two
12:30:01	12	with the scope of his noncompete agreement?	12:32:21	12	years, played a role in managing and directing
12:30:06	13	A I am not in the business of	12:32:25	13	that business or they were otherwise exposed to
12:30:08	14	inappropriately restricting people's post-	12:32:29	14	significant amounts of confidential and
12:30:12	15	employment opportunities, you know, and if there's	12:32:34	15	proprietary information.
12:30:14	16	not a true business need, then, you know, it's	12:32:36	16	Q In your view --
12:30:18	17	just not something that, you know, I think that	12:32:38	17	A So what I would normally do when an
12:30:20	18	strikes the appropriate balance of, you know, how	12:32:40	18	executive leaves, and if he or she has a provision
12:30:23	19	we treat our executives.	12:32:44	19	in that, at the time they leave, we would tell
12:30:50	20	Q Did you believe that the noncompete	12:32:48	20	them what we thought the scope was, and we would
12:30:55	21	provisions of the restricted stock agreement would	12:32:53	21	go through the process internally at Capital One
12:30:57	22	constitute an inappropriate restriction on Kanas'	12:32:55	22	and say, okay, if Sally is leaving, where has
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12:31:00	1	post-employment opportunity if those had not been	12:32:59	1	Sally worked for the last two years, and what do
12:31:03	2	modified?	12:33:03	2	we think Sally knew or acquired about a particular
12:31:04	3	A I didn't think it was necessary. I	12:33:06	3	business that may be reflected in her noncompete.
12:31:07	4	didn't -- you know, I wasn't, you know . . .	12:33:11	4	And at the time Sally would leave, we
12:31:12	5	Q Did you form any opinion as to whether	12:33:13	5	would say, okay, Sally, you worked in the X
12:31:16	6	or not the original provisions of the noncompete	12:33:16	6	business for the last three years that you've been
12:31:17	7	and the restricted stock agreement were	12:33:19	7	at Capital One. The Y business you've never
12:31:20	8	unenforceable as written?	12:33:23	8	worked in it, and you didn't really, you know, get
12:31:22	9	MR. SNYDER: Objection to form.	12:33:26	9	the secret sauce, trade secrets, proprietary
12:31:23	10	You may answer.	12:33:30	10	confidential information of the Y business. So
12:31:25	11	THE WITNESS: No, I never formed that	12:33:33	11	therefore, you know, your noncompete, we're not
12:31:26	12	opinion. They were clearly -- my belief is	12:33:37	12	imposing a post-employment restriction with
12:31:29	13	that they were enforceable at the time they	12:33:40	13	respect to that business, but only the business in
12:31:32	14	were executed in March of '06.	12:33:42	14	which you worked. Okay?
12:31:35	15	BY MR. SINGER:	12:33:44	15	So that's kind of the principle behind
12:31:35	16	Q Do you believe they were enforceable at	12:33:46	16	it. So if I didn't have that conversation with
12:31:36	17	the time that Kanas and Bohlsen left?	12:33:49	17	John when I assessed the situation and I looked,
12:31:39	18	A Yes.	12:33:53	18	you know, well, he hadn't worked in the card
12:31:40	19	Q So in your belief, it would have been	12:33:56	19	business, and because of his relatively short
12:31:42	20	appropriate to restrain Kanas and Bohlsen on a	12:33:59	20	period of time that he was there and the way he
12:31:45	21	geographic scope as broad as the one set forth in	12:34:01	21	conducted his activity there, which was not, you
12:31:48	22	the restricted stock agreement?	12:34:04	22	know, as engaging of the other executives as is

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02:23:32	1	MR. SNYDER: Objection. The inclusion	02:25:15	1	very goodwill that we bought when we paid
02:23:34	2	of the word "so" purports to summarize prior	02:25:21	2	\$13.2 billion to buy North Fork. He is
02:23:38	3	testimony, and to that extent misstates prior	02:25:24	3	advertising. He's marketing. You know, he may be
02:23:40	4	testimony.	02:25:28	4	doing it in his own way. He's communicating to
02:23:41	5	You may answer.	02:25:33	5	customers that may very well be our customers or
02:23:42	6	MR. SINGER: I'll just withdraw the	02:25:36	6	customers that we would be competing for in that
02:23:43	7	question. I think we have your answer.	02:25:40	7	market, and making it very clear that they can
02:23:45	8	BY MR. SINGER:	02:25:43	8	either come to him now in his bank in Florida or
02:23:45	9	Q How about talking to other people who	02:25:46	9	that he would soon be here, in violation of this
02:23:48	10	he is colleagues with; is that a prohibition of	02:25:48	10	noncompete. That's violative of this noncompete.
02:23:52	11	the covenant, in your view?	02:25:51	11	Q Even if the announcement was very clear
02:23:54	12	MR. SNYDER: Object to form. Vague and	02:25:53	12	that no branch would open in New York until after
02:23:56	13	ambiguous as to talking to people.	02:25:58	13	August 6 of 2012?
02:23:57	14	You may answer.	02:26:00	14	MR. SNYDER: Objection. Lacks
02:23:58	15	BY MR. SINGER:	02:26:00	15	foundation and is argumentative.
02:23:58	16	Q I'll be more specific. Mr. Kanas	02:26:03	16	You may answer.
02:24:01	17	talking with Mr. Volson (assumed spelling) before	02:26:05	17	THE WITNESS: The answer is that that is
02:24:03	18	August 6, 2012, about their intentions to open up	02:26:07	18	marketing. That is part of the business of
02:24:06	19	branches in the tri-state area after the covenant	02:26:11	19	commercial banking. So doing that, no matter
02:24:10	20	expires; in your view, is that prohibited by the	02:26:14	20	what date you said you were going to do it,
02:24:12	21	covenant?	02:26:17	21	if you're doing it in this five-year period,
02:24:13	22	A That depends.	02:26:20	22	it's prohibited by this covenant.
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02:24:14	1	Q On what?	02:26:23	1	BY MR. SINGER:
02:24:16	2	A The extent and the nature of the	02:26:23	2	Q Okay. So let's say hypothetically, the
02:24:18	3	conversations. If it, if it melds into business	02:26:25	3	day before the covenant expires, August 5, you
02:24:23	4	planning for purposes of engaging in this	02:26:30	4	wanted to announce you were going to get into
02:24:28	5	business, that is part and parcel of the business	02:26:32	5	business on August 6, that would be a violation of
02:24:31	6	that is prohibited.	02:26:35	6	the covenant, because it's announcing your intent
02:24:33	7	Q Well, when does a conversation become	02:26:39	7	to compete?
02:24:35	8	business planning?	02:26:40	8	A That's correct.
02:24:39	9	MR. SNYDER: Objection to form.	02:26:41	9	Q And similarly, leasing a branch location
02:24:40	10	Argumentative.	02:26:47	10	on August 5, 2012, would also be a violation even
02:24:41	11	You may answer.	02:26:50	11	if it wasn't going to open until later?
02:24:43	12	THE WITNESS: You know, I'm sure there's	02:26:53	12	A That's correct.
02:24:45	13	a point at which it does.	02:26:54	13	Q And you say this, recognizing that there
02:24:47	14	BY MR. SINGER:	02:26:55	14	is a startup time to open branch locations, begin
02:24:47	15	Q But you can't articulate it?	02:27:00	15	doing business in a given location?
02:24:49	16	A I would certainly know it when I saw it.	02:27:04	16	A That's part of the business of banking.
02:24:53	17	Q Okay. Announcing publicly to the public	02:27:05	17	Securing employees, marketing, opening or
02:25:01	18	that you intend to get back into business after	02:27:11	18	selecting locations in which to engage with
02:25:04	19	your covenant expires; in your view, does that in	02:27:14	19	customers is all part of the business of banking.
02:25:08	20	itself constitute a violation of the restricted	02:27:17	20	That's what was prohibited by this, by this thing.
02:25:12	21	covenant?	02:27:21	21	I reject the content -- the context that
02:25:13	22	A Absolutely. Mr. Kanas is trading on the	02:27:26	22	those things are somehow, quote-unquote,

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02:27:27	1	preparatory to the business. They're part and	02:29:30	1	management team," so forth and so on.
02:27:32	2	parcel of this business that was prohibited.	02:29:33	2	Were you aware of that statement in
02:27:35	3	Q When did you first learned that	02:29:34	3	October of 2010?
02:27:37	4	BankUnited was intending or had announced that it	02:29:35	4	A Not that I recall.
02:27:39	5	was intending to open branches in New York after	02:29:37	5	Q So it's your testimony that you only
02:27:42	6	August 6, 2012?	02:29:41	6	learned of public statements made by Mr. Kanas and
02:27:44	7	MR. SNYDER: You may answer.	02:29:45	7	Mr. Bohlsen about the intent to open branches in
02:27:45	8	THE WITNESS: Sometime in the last year.	02:29:47	8	New York after the covenant expired sometime in
02:27:47	9	I don't know exactly when.	02:29:50	9	the last year?
02:27:50	10	BY MR. SINGER:	02:29:51	10	MR. SNYDER: Objection. Misstates his
02:27:51	11	Q You're aware that Mr. Kanas and Bohlsen	02:29:53	11	testimony.
02:27:52	12	were part of an investor group that acquired	02:29:54	12	You may answer.
02:27:55	13	assets that used to be BankUnited FSB in 2009?	02:29:55	13	THE WITNESS: I said, look, I don't
02:27:59	14	A Yes, I am.	02:29:57	14	remember the specific date. My recollection
02:28:00	15	Q Are you aware that statements were made	02:29:59	15	is I believe it was sometime in the last year
02:28:03	16	by Kanas and Bohlsen about when they, their	02:30:01	16	when I became aware of the kind of comments
02:28:07	17	covenants expired, that they intended to come back	02:30:04	17	that, you know, Mr. Kanas and Mr. Bohlsen had
02:28:10	18	into New York?	02:30:07	18	been making.
02:28:11	19	A At what point in time?	02:30:09	19	BY MR. SINGER:
02:28:13	20	Q In 2009 and 2010.	02:30:09	20	Q How soon was it before this lawsuit was
02:28:15	21	A I just answered that I was aware	02:30:11	21	filed that you first became aware of that?
02:28:17	22	sometime in the last year.	02:30:15	22	A You know, I don't, I don't have a
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02:28:19	1	Q Were you aware -- was it brought to your	02:30:16	1	specific recollection. When was the -- the
02:28:21	2	attention when those public statements were made?	02:30:18	2	lawsuit was filed when? Sometime during the
02:28:23	3	MR. SNYDER: Objection to form. Vague	02:30:20	3	summer; right?
02:28:24	4	and ambiguous as to time.	02:30:28	4	Q In your discussions with Mr. Kanas in
02:28:25	5	You may answer.	02:30:31	5	the time period that this was negotiated in 2007,
02:28:44	6	John, I think there's a question	02:30:36	6	do you recall any discussions about the issue of
02:28:45	7	pending. Do you want to read the last	02:30:38	7	planning or preparing to compete?
02:28:49	8	question?	02:30:41	8	A I'm sorry. We're now talking -- we're
02:28:56	9	THE WITNESS: Oh, I'm sorry.	02:30:43	9	now back in the time --
02:28:57	10	(Whereupon, reporter reads requested	02:30:44	10	Q Yes, we're back in 2006.
02:28:57	11	material.)	02:30:44	11	A -- when we were talking about the
02:29:00	12	THE WITNESS: I'm sorry. Which, which	02:30:45	12	separation agreement?
02:29:01	13	time period are we talking about again,	02:30:46	13	Q That's correct.
02:29:04	14	Mr. Singer?	02:30:48	14	A I'm sorry. Please repeat the question.
02:29:06	15	BY MR. SINGER:	02:30:50	15	Q Are there any discussions that you
02:29:06	16	Q Well, let's -- for example, you can look	02:30:51	16	recall having with Mr. Kanas during that time
02:29:08	17	at page 13 of the complaint, which refers to a	02:30:53	17	frame when this was being negotiated where you
02:29:11	18	"registration statement filed with the U.S.	02:30:57	18	said in words or effect that we view you preparing
02:29:16	19	Securities & Exchange Commission on October 29,	02:31:00	19	to compete, looking at branch locations, hiring
02:29:20	20	2010, whereby BankUnited informed its potential	02:31:04	20	people as being prohibited by the terms of this
02:29:23	21	shareholders it sought to expand operations in	02:31:07	21	agreement? Any discussion on that subject?
02:29:27	22	select markets such as New York, because its	02:31:10	22	A I don't believe he asked me any

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02:59:06	1	the assets of BankUnited FSB from the FDIC, that	03:01:04	1	nothing to do with the management of that loan.
02:59:11	2	in that mix may have been loans on property in the	03:01:06	2	If they -- if you are the CEO of an institution
02:59:14	3	tri-state area?	03:01:08	3	and the director of an institution, you cannot
02:59:15	4	A I think I've already answered that	03:01:10	4	wash your hands of any aspect of the management of
02:59:16	5	question. I was unaware of any loans that were in	03:01:14	5	the bank's assets, so they're involved in the
02:59:19	6	the portfolios that they bought from the FDIC	03:01:18	6	management of those loans. It's a hypothetical
02:59:22	7	were, you know, secured by assets in New York,	03:01:21	7	without, you know, without any basis in reality.
02:59:27	8	Connecticut or New Jersey.	03:01:25	8	Q Well, that, that's -- I just wanted to
02:59:28	9	Q And I take it your view is that there's	03:01:27	9	establish your position, and your position is
02:59:29	10	no threshold to such loans. If they had one loan	03:01:29	10	because Kanas is a CEO and Bohlson is the number
02:59:32	11	for a hundred dollars that was made to someone in	03:01:33	11	two man at BankUnited, in your view, that means
02:59:35	12	New York, that would have been a violation of the	03:01:38	12	every loan of that institution is one in which
02:59:36	13	covenant; correct?	03:01:41	13	they're involved in.
02:59:38	14	A It would have been a technical violation	03:01:43	14	A They have responsibilities associated
02:59:39	15	of the covenant.	03:01:45	15	with the management of those banking products.
02:59:44	16	Q And it's your view that any loans that	03:01:50	16	The whole intent of this noncompete was
02:59:47	17	BankUnited may have acquired in that manner that	03:01:53	17	not to have them serving as officers and directors
02:59:52	18	are in the tri-state area violate Kanas and	03:01:59	18	of a banking business engaged in that business in
02:59:57	19	Bohlson's covenant even if Kanas and Bohlson had	03:02:02	19	the tri-state area. If, as it turns out, that's
02:59:59	20	absolutely nothing to do with the making or	03:02:06	20	what BankUnited was at the time they acquired the
03:00:01	21	management of those loans?	03:02:09	21	assets, that's a violation of the noncompete.
03:00:03	22	MR. SNYDER: I would object, because	03:02:11	22	Q And under your interpretation of the
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03:00:05	1	that question lacks foundation.	03:02:13	1	noncompete, wherever in the United States Kanas
03:00:09	2	You may answer.	03:02:16	2	and Bohlson may have associated themselves with a
03:00:11	3	THE WITNESS: I'm sorry. Could you	03:02:19	3	bank, if that bank had a loan that was with a
03:00:12	4	restate it.	03:02:22	4	customer in the tri-state area, that would mean
03:00:14	5	BY MR. SINGER:	03:02:26	5	that Kanas and Bohlson were in violation of their
03:00:14	6	Q Sure. I'll restate it instead of having	03:02:29	6	noncompete agreement?
03:00:17	7	it read back.	03:02:29	7	A Yep, and all they would have had to
03:00:18	8	It is your view that BankUnited's	03:02:31	8	do -- if it was de minimus, they could have called
03:00:21	9	holding loans that it acquired from the FDIC in	03:02:34	9	us up, and I'm sure we could have had a
03:00:25	10	the tri-state area is a violation of Kanas and	03:02:36	10	conversation about it. They didn't.
03:00:30	11	Bohlson's noncompete agreement, even if Kanas and	03:02:41	11	Q Did you have any discussions in your
03:00:34	12	Bohlson had absolutely nothing to do with the	03:02:43	12	meetings in May or June of 2007 with Mr. Kanas
03:00:36	13	making of those loans?	03:02:48	13	about what I've termed these legacy loans, the
03:00:38	14	A As officers and directors of the	03:02:51	14	issue of if you go into business and you buy
03:00:40	15	BankUnited, they're engaged in the business of	03:02:54	15	assets, and they turn out to have some loans in
03:00:44	16	managing banking products in the area that's	03:02:57	16	the tri-state area, whether that's a problem?
03:00:49	17	within the scope of the, of the noncompete, so	03:03:00	17	A I've already described the --
03:00:52	18	yes, that would be violative of the noncompete.	03:03:02	18	Q The issue didn't come up?
03:00:55	19	Q And the same would be true even if Kanas	03:03:03	19	A -- the extent of the conversations. You
03:00:57	20	and Bohlson had nothing to do with the management	03:03:04	20	know, the, the issue was not focused on their
03:00:59	21	of those loans?	03:03:07	21	reentering the business, because that's not where
03:01:02	22	A I don't know what you mean by they have	03:03:10	22	they were focused at the, at the moment, or if

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03:28:45	1	loans might be in the tri-state area within those	03:30:26	1	hypothetical question. Objection on the
03:28:48	2	loan pools?	03:30:28	2	ground that it lacks foundation.
03:28:48	3	A They, you know, they would all be	03:30:30	3	You may answer.
03:28:49	4	technical violations. Again, you know, whether	03:30:31	4	THE WITNESS: Okay. Again, as I said,
03:28:51	5	it's a material violation or whether we would do	03:30:34	5	you know, in their capacity as officers and
03:28:53	6	anything about it, you know, obviously would	03:30:37	6	directors of the institution, the provision
03:28:55	7	depend upon the, you know, the facts and the, and	03:30:39	7	was intended to prohibit them from getting in
03:28:58	8	the circumstances and the magnitude of the, of the	03:30:41	8	the business of managing a bank that is
03:29:01	9	violation.	03:30:45	9	active in the business of commercial and
03:29:01	10	Q At what point does it become material,	03:30:49	10	consumer banking in the tri-state area.
03:29:03	11	in your judgment?	03:30:51	11	BY MR. SINGER:
03:29:05	12	A That's, you know, kind of fact and	03:30:51	12	Q What interest of Capital One is
03:29:07	13	circumstance-based, and, you know, it would depend	03:30:53	13	implicated by BankUnited's acquisition of a loan
03:29:11	14	on the holistic, holistic, holistic thing of	03:30:57	14	pool that has certain of the loans in the
03:29:14	15	what's going on.	03:30:59	15	tri-state area as opposed to other states?
03:29:15	16	Q Aren't loan pools traded like	03:31:03	16	A Other states are outside of the scope of
03:29:17	17	commodities?	03:31:04	17	the, of the noncompete.
03:29:18	18	A I, I don't know.	03:31:06	18	Q Well, what interest of Capital One is
03:29:20	19	Q Do you think there's any particular	03:31:10	19	implicated by the fact that certain of the loans
03:29:22	20	customer relationship that Kanas and Bohlsen are	03:31:12	20	are in the tri-state area?
03:29:25	21	involved in with any of the customers whose loans	03:31:15	21	A If it's within the scope of the
03:29:27	22	show up in a loan pool like that?	03:31:17	22	noncompete, it's the benefit of the bargain that,
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03:29:29	1	A There could be.	03:31:19	1	you know, we negotiated in good faith with
03:29:31	2	Q Think so?	03:31:21	2	Mr. Kanas and Mr. Bohlsen, that we paid a lot of
03:29:31	3	A There could be, depending upon the, the	03:31:25	3	good money both for the franchise itself as well
03:29:33	4	nature of the, of the loans.	03:31:28	4	as good money to them personally to abide by their
03:29:46	5	Q Does it matter to you whether Capital	03:31:33	5	noncompete, and that's what we would expect them
03:29:48	6	One was in competition for acquiring that	03:31:35	6	to do.
03:29:50	7	particular secondary loan package?	03:31:36	7	Q Is Capital One affected by the fact that
03:29:52	8	A No.	03:31:39	8	such a loan pool is bought by BankUnited as
03:29:55	9	Q Does it matter to you whether Kanas and	03:31:46	9	opposed to CitiBank?
03:29:56	10	Bohlsen had any personal role in connection with	03:31:47	10	A They could be. It's one more
03:30:00	11	negotiating the acquisition of that loan package?	03:31:48	11	competitor.
03:30:04	12	A No.	03:31:50	12	Q I'm not sure I understand it. How is
03:30:05	13	Q Or reviewing the loans that were in the	03:31:51	13	Capital One's interest implicated by BankUnited
03:30:06	14	package before making a bid?	03:31:54	14	owning a loan pool as opposed to CitiBank, which
03:30:08	15	A No.	03:31:57	15	is here in the tri-state area, or Bank of America
03:30:11	16	Q So they could have had no involvement	03:32:00	16	or any one of the 50 other banks in the tri-state
03:30:13	17	personally whatsoever in the acquisition of the	03:32:03	17	area?
03:30:16	18	loan pool, but you would still believe	03:32:04	18	A I'm not sure I understand your question.
03:30:18	19	BankUnited's acquisition of the secondary mortgage	03:32:05	19	Q You understand that loan pools such as
03:30:21	20	loan pool would violate the covenant?	03:32:07	20	this could be acquired without any say-so by
03:30:24	21	MR. SNYDER: Objection to the extent	03:32:13	21	Capital One, by any number of banks that have very
03:30:24	22	you're asking a factual as opposed to a	03:32:17	22	active businesses in the tri-state area, such as

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04:05:31	1	BY MR. SINGER:	04:06:59	1	MR. SNYDER: Objection. Misstates prior
04:05:31	2	Q I didn't ask about accountability. I	04:07:01	2	testimony.
04:05:33	3	asked about participation.	04:07:01	3	You can answer.
04:05:35	4	Do you have to personally participate in	04:07:04	4	THE WITNESS: I'm sorry. Could you
04:05:37	5	the activities of all of those hundreds of	04:07:04	5	repeat the question please.
04:05:41	6	subsidiaries of Capital One?	04:07:05	6	BY MR. SINGER:
04:05:43	7	MR. SNYDER: Objection. Vague and	04:07:06	7	Q What is the nature of the services you
04:05:43	8	ambiguous.	04:07:08	8	provide to all these subsidiaries?
04:05:44	9	You can answer.	04:07:11	9	A That's way too broad of a question. I
04:05:45	10	THE WITNESS: Yeah, I don't know what	04:07:13	10	mean we've got lots of subsidiaries. It differs
04:05:46	11	you mean by "personal activities," but	04:07:16	11	depending upon the subsidiary.
04:05:48	12	obviously it takes a large number of people	04:07:17	12	Q But you believe you provide services
04:05:50	13	to run a complex organization, so there are	04:07:19	13	personally to each one of those hundreds of
04:05:54	14	lots of things that I don't personally engage	04:07:21	14	subsidiaries?
04:05:58	15	in.	04:07:22	15	A At some level, to the extent that I'm
04:05:58	16	BY MR. SINGER:	04:07:24	16	corporate secretary, to the extent that I'm
04:06:00	17	Q There are probably subsidiaries of	04:07:25	17	responsible for the provision of legal services,
04:06:02	18	Capital One that you wouldn't even recognize if	04:07:27	18	to the extent any of them need it, you know, I am
04:06:05	19	the name was mentioned to you?	04:07:30	19	accountable for making sure that services are
04:06:08	20	A Possibly.	04:07:32	20	provided to all of those companies, and I may very
04:06:09	21	Q And there's certainly subsidiaries of	04:07:36	21	well provide services. I sign a lot of documents,
04:06:12	22	Capital One where you haven't personally provided	04:07:38	22	you know, and ask a lot of questions before I sign
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04:06:14	1	any services to that subsidiary?	04:07:41	1	a lot of documents related to the subsidiaries.
04:06:16	2	MR. SNYDER: Objection. Lacks	04:07:55	2	Q Can you explain any way in which Capital
04:06:16	3	foundation.	04:07:57	3	One's business is impacted by Herald National Bank
04:06:18	4	You can answer.	04:08:01	4	branches being managed as part of BankUnited
04:06:19	5	THE WITNESS: Yeah, you know, I wouldn't	04:08:07	5	between, let's say, now and August of 2012 as
04:06:21	6	know, but since I'm corporate secretary, I	04:08:09	6	opposed to being part of Herald National Bank?
04:06:24	7	probably have responsibility, have	04:08:16	7	A They're directly competing in the same
04:06:25	8	responsibilities for ensuring the	04:08:17	8	market, in the very business that this noncompete
04:06:28	9	separateness of all of those institutions,	04:08:20	9	was designed to prohibit Mr. Kanas and Mr. Bohlsen
04:06:29	10	either directly or not very many layers down	04:08:24	10	from having any responsibility for. The plain
04:06:32	11	below, and I take steps to make sure that	04:08:28	11	language of the agreement covers the Herald
04:06:35	12	that's all done appropriately.	04:08:31	12	National example. It does not fit within the
04:06:36	13	So I think in my case I actually do	04:08:34	13	exception of exception 2 for the reasons that I
04:06:41	14	provide services at some level for all those	04:08:36	14	stated earlier.
04:06:44	15	subsidiaries.	04:08:39	15	They cannot wall themselves off, and
04:06:45	16	BY MR. SINGER:	04:08:41	16	based on my own experience with how they ran their
04:06:45	17	Q And that service is to make sure that	04:08:46	17	institutions before and how Mr. Singh, you know,
04:06:52	18	the subsidiaries are maintained as separate	04:08:53	18	worked with them, I don't believe for an instant
04:06:52	19	corporate entities?	04:08:56	19	that Mr. Kanas and Mr. Bohlsen are going to be
04:06:52	20	Those are services that you take to	04:08:59	20	ring-fenced from activities of Herald National.
04:06:54	21	maintain the separate corporate identity of those	04:09:02	21	Q You raised Mr. Singh.
04:06:58	22	different subsidiaries?	04:09:05	22	Mr. Singh used to work for Capital One;

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04:09:07	1	is that correct?	04:10:55	1	consumer banking products in New York.
04:09:08	2	A Yes, he did.	04:10:57	2	BY MR. SINGER:
04:09:09	3	Q What was his position?	04:10:57	3	Q And so that would violate the covenant
04:09:10	4	A You know, I'm not even sure, to be quite	04:10:59	4	even if Kanas and Bohlson --
04:09:12	5	honest. I know that he was -- he ended up being	04:11:02	5	A That's correct.
04:09:13	6	with us for a relatively short time. I don't know	04:11:02	6	Q -- and BankUnited decide not to place a
04:09:16	7	whether he ended up in our, you know, corporate	04:11:05	7	bid --
04:09:18	8	development group or whether he was working for,	04:11:05	8	A That's correct.
04:09:21	9	you know, the Kanas and Bohlson in some capacity	04:11:06	9	Q -- on those assets?
04:09:24	10	in the, you know, the bank.	04:11:07	10	A That's correct.
04:09:25	11	Q Did he have access to confidential	04:11:22	11	Q Let's talk for a few moments about the
04:09:27	12	information of Capital One?	04:11:24	12	level of association with BankUnited, or not
04:09:28	13	A I believe he did.	04:11:26	13	BankUnited but a competitive business as it's
04:09:28	14	[REDACTED]	04:11:28	14	defined in the agreement.
04:09:28	15	[REDACTED]	04:11:30	15	MR. SNYDER: I just want to make clear
04:09:28	16	[REDACTED]	04:11:31	16	that -- we can do it on the record or off the
04:09:53	17	Q Do you believe that BankUnited's	04:11:35	17	record -- that these are all 30(b)(6)
04:09:55	18	considering the placing of a bid on a portfolio	04:11:37	18	questions as I understand that you're
04:09:57	19	for the Bank of Ireland, even if they ultimately	04:11:40	19	intending to address to Mike Slocum. Is
04:10:01	20	never placed a bid, constitutes a violation of	04:11:44	20	that -- I just want to make sure that --
04:10:04	21	Kanas and Bohlson's covenant?	04:11:46	21	MR. SINGER: I'm not sure where these
04:10:07	22	MR. SNYDER: Objection. Lacks	04:11:47	22	fit between personal -- let me finish --
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04:10:07	1	foundation.	04:11:51	1	between personal answers of the witness as
04:10:07	2	You can answer.	04:11:55	2	someone who is an officer of Capital One and
04:10:08	3	THE WITNESS: I don't know. I don't	04:11:57	3	someone who personally negotiated this
04:10:08	4	know what you mean by the word "considering."	04:11:58	4	agreement, and where -- whether they fall
04:10:11	5	If they are engaged actively in attempts,	04:12:03	5	into one or more categories of 30(b)(6).
04:10:14	6	conversations or, you know, other efforts to	04:12:04	6	I do acknowledge that, I think it was at
04:10:17	7	acquire banking assets in New York, that's	04:12:07	7	lunchtime, that Mr. Hogan informed me that
04:10:22	8	engaged in the business of acquiring	04:12:11	8	the last topic of the 30(b)(6), which I think
04:10:24	9	commercial and banking products. It's not	04:12:14	9	deals with violations of the covenant by the
04:10:26	10	just --	04:12:18	10	defendants would be treated by Mr. Slocum
04:10:27	11	BY MR. SINGER:	04:12:20	11	rather than by Mr. Finneran.
04:10:27	12	Q So --	04:12:23	12	MR. SNYDER: Right. Mr. Slocum is the
04:10:27	13	A You know, if they're successful, it's	04:12:24	13	business person who had knowledge of the
04:10:29	14	all of the activities that lead up to that, you	04:12:28	14	business as the company representative, and
04:10:32	15	know, conversations, planning, preparation, bids,	04:12:32	15	obviously Mr. Finneran is the general
04:10:36	16	if there was such a bid, you know, talking with	04:12:33	16	counsel, not involved in the daily operations
04:10:39	17	the principals on the other side, engaging with	04:12:35	17	of the business. So it sounds to me that
04:10:42	18	investment banks or other agents who may be	04:12:38	18	you're, you're asking 30(b)(6) type
04:10:45	19	involved in the, you know, in the, in the sale of	04:12:40	19	questions, and I just want to, if you are --
04:10:47	20	those, those activities.	04:12:44	20	MR. SINGER: I, I, I don't think I need
04:10:49	21	All of those activities constitute the	04:12:45	21	to repeat again, but I think I made clear,
04:10:52	22	business of acquiring and managing commercial and	04:12:48	22	I'm asking questions of this witness. To the

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04:42:01 4 BY MR. SINGER:

04:42:02 5 Q I'm asking: As you sit here today, do

04:42:05 6 you believe Mr. Kanas is honest?

04:42:06 7 A You know, I have not had any dealings

04:42:07 8 with Mr. Kanas for a long time. At the, at the

04:42:09 9 time I thought, you know, at the time, and when I

04:42:12 10 wrote this and the way we were, you know, we were

04:42:15 11 engaging in, you know, trying to accommodate his

04:42:20 12 wishes to leave and to also leave the business in

04:42:23 13 a, you know, in as good a position we could to

04:42:28 14 ensure its future success, you know, he was

04:42:31 15 treating it with the respect that, you know, I, I

04:42:34 16 would expect.

04:42:37 17 You know, I think that, you know, some

04:42:39 18 of the activities that we're, you know, involved

04:42:41 19 in right now is -- probably has me questioning

04:42:45 20 some of John's motives and, and integrity because

04:42:50 21 of all the matters that we've laid out in the

04:42:52 22 complaint.

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1 ERRATA SHEET

2 IN RE: CAPITAL ONE VS. KANAS AND BOHLSSEN

3 RETURN BY:

4 PAGE LINE CORRECTION AND REASON

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22 (DATE) (SIGNATURE)

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4 CERTIFICATE OF SHORTHAND REPORTER -- NOTARY PUBLIC

5 I, Laurie Bangart-Smith, Registered

6 Professional Reporter, the officer before

7 whom the foregoing deposition was taken, do

8 hereby certify that the foregoing transcript

9 is a true and correct record of the testimony

10 given; that said testimony was taken by me

11 stenographically and thereafter reduced to

12 typewriting under my supervision; and that I

13 am neither counsel for, related to, nor

14 employed by any of the parties to this case

15 and have no interest, financial or otherwise,

16 in its outcome.

17

18 IN WITNESS WHEREOF, I have hereunto set

19 my hand and affixed my notarial seal this

20 13th day of February, 2012.

21

22 My commission expires: March 14, 2016

23

24 _____

25 LAURIE BANGART-SMITH

26 NOTARY PUBLIC IN AND FOR

27 THE DISTRICT OF COLUMBIA

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